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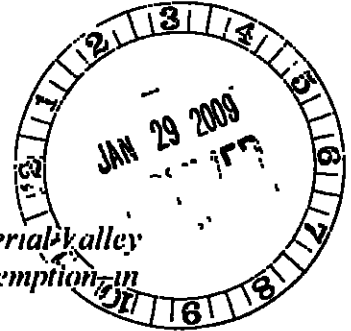
**LAW OFFICES OF
LOUIS E. GITOMER**

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

January 29, 2009

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4022
(202) 466-6532
FAX (410) 332-0885

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423



RE: Docket No. AB-1029 (Sub-No. 1X), *San Diego & Imperial Valley Railroad Company, Inc. - Discontinuance of Service Exemption in San Diego County, CA*

Dear Acting Secretary Quinlan:

Enclosed are the original and 10 copies of a Petition for Exemption for the San Diego & Imperial Valley Railroad Company, Inc. ("SDIV") to discontinue service over a 1.35-mile line of railroad between milepost 19.85 and milepost 21.2 in the vicinity of Escondido, San Diego County, CA. Also enclosed are a check from SDIV for the filing fee of \$6,300, and a computer diskette containing the Petition in Word and pdf format.

Please time and date stamp the additional copy of this letter and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for San Diego & Imperial Valley
Railroad Company, Inc.

ENTERED
Office of Proceedings
JAN 29 2009
Part of
Public Record

Enclosures

FILED
JAN 29 2009
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
JAN 29 2009
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No AB-1029 (Sub-No 1X)

SAN DIEGO & IMPERIAL VALLEY RAILROAD COMPANY, INC –
DISCONTINUANCE OF SERVICE EXEMPTION–SAN DIEGO COUNTY, CA

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings
JAN 29 2009
Part of
Public Record

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Attorneys for SAN DIEGO & IMPERIAL
VALLEY RAILROAD COMPANY, INC

Dated January 29, 2009

FILED
JAN 29 2009
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
JAN 29 2009
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No AB-1029 (Sub-No 1X)

**SAN DIEGO & IMPERIAL VALLEY RAILROAD COMPANY, INC –
DISCONTINUANCE OF SERVICE EXEMPTION–SAN DIEGO COUNTY, CA**

PETITION FOR EXEMPTION

The San Diego & Imperial Valley Railroad Company, Inc (“SDIV”) petitions the Surface Transportation Board (the “Board”) to exempt under 49 U S C §10502 SDIV’s discontinuance of service over a 1 35-mile line of railroad between milepost 19 85 and milepost 21 2 in the vicinity of Escondido, San Diego County, CA (the “Line”), from the requirements of 49 U S C §10903

SDIV leased the Line from the BNSF Railway Company (“BNSF”) On September 9, 2008, BNSF notified SDIV that it was terminating the lease as of October 24, 2008 and replacing SDIV as the operator of the Line The Pacific Sun Railroad, L L C (“PSR”) is the new operator of the Line

Through discontinuance of service, SDIV seeks to end its common carrier obligation to operate over the Line because its right to operate over the Line under the lease with BNSF has been terminated and BNSF has replaced SDIV with the PSR as the operator of the Line Discontinuance of service will also end SDIV’s authorization to potentially concurrently operate over the Line with PSR

BACKGROUND

SDIV entered a Lease dated as of January 21, 2005 with the BNSF to operate BNSF's reserved rail freight service easement over the Escondido Subdivision rail corridor between milepost 19.85 and the eastern end of the rail corridor at about milepost 21.2 in Escondido. SDIV filed a Notice of Exemption under 49 C.F.R. §1150.41 on February 2, 2005 to lease and operate the Line. The Board served a notice of exemption on March 2, 2005, and SDIV commenced operations on March 1, 2005.¹

BNSF notified SDIV that it was terminating the arrangement at Escondido.² On September 17, 2008, PSR filed a notice of exemption to lease the Line, along with additional track from BNSF.³ PSR expected to begin operations on October 24, 2008, the same date that the BNSF termination of the SDIV lease became effective.⁴

SDIV has provided service over the Line from March 1, 2005 until October 24, 2008 pursuant to the lease. SDIV understands that PSR began operations over the Line on October 24, 2008. SDIV also understands that the shippers on the Line are continuing to receive rail service from PSR instead of SDIV. SDIV contends that discontinuing service over the Line will permit SDIV to comply with its contractual commitments. Without discontinuance authority, SDIV would retain a common carrier obligation to provide service upon reasonable request from a shipper. Not only would SDIV operation be contrary to the lease termination, but it would also require a joint operating protocol with PSR. By SDIV discontinuing service over the Line, SDIV

¹ See, *Sun Diego & Imperial Valley Railroad Company, Inc.—Lease and Operation Exemption BNSF Railway Company*, STB Finance Docket No. 34638 (STB served March 2, 2005).

² See Exhibit E.

³ See *Pacific Sun Railroad, L.L.C.—Lease and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 35173, Verified Notice of Exemption filed September 17, 2008.

and PSR will avoid the time and expense necessary to agree to joint operating protocols over the Line

The Line traverses Zip Codes 92025 and 92029 Escondido is a station on the Line Based on information in SDIV's possession, the Line does not contain federally granted right-of-way Any documentation in SDIV's possession concerning title will be made available to those requesting it However, ownership of the Line will not change as a result of the discontinuance of service by SDIV and service will be provided by PSR

A map of the Line is attached as Exhibit A The draft Federal Register Notice is in Exhibit B and copies of the newspaper publication and the required certification are in Exhibit C. Clarification from the Section of Environmental Assessment ("SEA") that neither an Environmental Report ("ER") nor Historic Report ("HR") is required to be filed in this proceeding is in Exhibit D Exhibit E contains the notification from BNSF as to the termination of the lease Exhibit F is the certificate of service Exhibit G is a color copy of the map

ARGUMENT SUPPORTING THE ABANDONMENT

SDIV seeks an exemption under 49 U.S.C. §10502 from the applicable requirements of 49 U.S.C. §10903 in order to discontinue service over the Line

Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and

(2) either

⁴ See *Pacific Sun Railroad, L.L.C.—Lease and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 35173 (STB served October 3, 2008)

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation

H. R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H. R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. §10903 Is Not Necessary to Carry Out the Rail Transportation Policy.

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal discontinuance of service application, expedite regulatory decisions and

reduce regulatory barriers to exit 49 U.S.C. §10101 (2) and (7). The discontinuance of service by SDIV will not result in a loss of rail service. The shippers on the Line are still being served by PSR.

Granting this exemption fosters sound economic conditions and encourages efficient management by permitting the rationalization of an unnecessary rail line. SDIV will be able to terminate its common carrier obligation to provide service over the Line, while PSR continues to serve the shippers. 49 U.S.C. §10101 (3), (5) and (9). Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will continue to receive rail service from another short line railroad.

B. This Transaction Is Of Limited Scope.

The proposed transaction is of limited scope. SDIV seeks to discontinue service over a 1.35-mile line in one county in California.

C. This Transaction Will Not Result In An Abuse Of Market Power.

SDIV has been replaced by PSR as the railroad providing service over the Line. The shippers on the Line are receiving service from PSR and will not be deprived of rail service as a result of SDIV's discontinuance. Essentially, PSR is replacing SDIV as the carrier providing service over the Line. Accordingly, SDIV contends that the discontinuance of service over the Line will not result in an abuse of market power. One operating railroad is merely being replaced by another.

The Board has found that there is no abuse of market power where one railroad replaces a railroad that is discontinuing service. See *Timber Rock Railroad, Inc. —Discontinuance of*

Service Exemption—in Burleson, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties, TX, STB Docket No AB-998X (STB served January 25, 2007), at 2-3

ENVIRONMENTAL AND HISTORIC REPORTS

Pursuant to the clarification received from SEA, SDIV is not required to file either an ER or an HR for this discontinuance of service where PSR will continue to provide common carrier service over the Line. The letter from SEA is in Exhibit D

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached hereto as Exhibit B.

LABOR PROTECTION

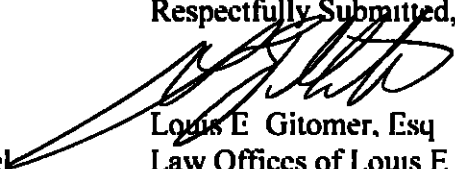
The interests of the railroad employees of SDIV who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R Co --Abandonment--Goshen*, 360 I C C 91 (1979)

CONCLUSION

Application of the regulatory requirements and procedures of 49 U S C §10903 to the discontinuance of service over the Line is not required to carry out the rail transportation policy set forth in 49 U S C §10101, as previously shown. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this discontinuance of service is of limited scope. Accordingly, SDIV respectfully requests the Board to grant the proposed exemption of the discontinuance of service over the 1.35-mile Line.

Respectfully Submitted,

Scott G. Williams Esq
Senior Vice President & General Counsel
RailAmerica, Inc
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904) 538-6329
Scott.Williams@railamerica.com



Louis E. Gitomer, Esq
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532
Lou_Gitomer@verizon.net

Attorneys for SAN DIEGO & IMPERIAL
VALLEY RAILROAD COMPANY, INC

Dated January 29, 2009

EXHIBIT A-MAP

EXHIBIT B—FEDERAL REGISTER NOTICE

**SAN DIEGO & IMPERIAL VALLEY RAILROAD COMPANY, INC –
DISCONTINUANCE OF SERVICE EXEMPTION–SAN DIEGO COUNTY, CA**

Notice of Petition for Exemption to Discontinue Service

On January 29, 2009 the San Diego & Imperial Valley Railroad Company, Inc (“SDIV”) filed with the Surface Transportation Board, Washington, D C 20423, a petition for exemption for the discontinuance of service over a 1.35-mile line of railroad between milepost 19.85 and milepost 21.2 in the vicinity of Escondido, all of which traverses through United States Postal Service ZIP Codes 92025 and 92029 in San Diego County, CA (the “Line”) The station on the Line is Escondido

The Line does not contain federally granted rights-of-way Any documentation in the railroad’s possession will be made available promptly to those requesting it

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R Co –Abandonment–Goshen*, 360 I C C 91 (1979)

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U S C 10502(b). A final decision will be issued by May 19, 2009

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b)

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption Each

OFA must be accompanied by the filing fee, which is currently set at \$1.500 See 49 CFR 1002.2(f)(25)

All filings in response to this notice must refer to STB Docket No AB-1029 (Sub-No 1X) and must be sent to (1) Surface Transportation Board, 395 E Street, S W , Washington, DC 20423-0001, and (2) Louis F. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245-0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152 Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0305 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339]

Board decisions and notices are available on our website at "WWW STB DOT GOV "

Decided _____, 2009

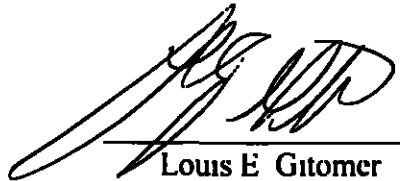
By the Board, David M. Konschnik, Director, Office of Proceedings

Anne K. Quinlan
Acting Secretary

EXHIBIT C-NEWSPAPER CERTIFICATION

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance of service in Docket No 1029 (Sub-No 1X) was advertised on January 23, 2009 in the San Diego Union Tribune, a newspaper of general circulation in San Diego County, CA. as required by 49 C.F.R. § 1105.12

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over a horizontal line.

Louis E. Gitomer
January 29, 2009

San Diego & Imperial Valley Railroad Company, Inc. ("SDIV") gives notice that on or about January 27, 2009 it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting the discontinuance of service over a 1.35-mile line of railroad between milepost 19.85 and milepost 21.2 in the vicinity of Escondido, all of which traverses through United States Postal Service ZIP Codes 92025 and 92029 in San Diego County, CA. The proceeding has been docketed as No. AB-1029 (Sub-No. 1 X).

Appropriate offers of financial assistance to continue rail service through subsidy can be filed with the Board. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E. Street, S.W., Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-245-0231. Copies of any comments or requests for conditions should be served on the applicant's representative Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, phone (202) 466-6532, fax (410) 332-0885, and email Lou_Gitomer@verizon.net.

EXHIBIT D-SEA CLARIFICATION

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Louis E. Gitomer
The Adams Building
Suite 301
600 Baltimore Avenue
Towson, MD 21204-4022

JAN 16 2009

Re STB Docket No AB-1029 (Sub-No 1X), The San Diego & Imperial Valley Railroad Company, Inc. – Discontinuance Exemption – in San Diego County, CA

I am responding to your letter dated October 22, 2008, on behalf of The San Diego & Imperial Valley Railroad Company, Inc (SDIV). In your letter, you ask the Section of Environmental Analysis (SEA) to clarify whether a forthcoming petition by SDIV seeking discontinuance of service requires an environmental and historic report or if the action would be exempt from the Board's environmental and historic reporting requirements.

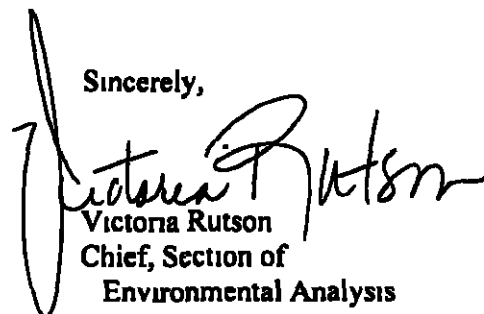
You explain that SDIV operated a 1.35 mile of rail line (Line) between milepost 19.85 and milepost 21.2 near Escondido, San Diego County, CA, pursuant to a lease from The BNSF Railway Company (BNSF). On September 9, 2008, BNSF notified SDIV that it was terminating its lease as of October 24, 2008 and that the Pacific Sun Railroad (PSR) would replace SDIV as the operator of the Line.

With the termination of its lease with BNSF, SDIV is now interested in filing for discontinuance of service over the Line. You explain that there will be no significant changes in carrier operations, and no operational changes that would exceed thresholds established by 49 CFR 1105.7(e)(4) or (5). Moreover, PSR would continue to operate the Line and there are no plans to dispose of or alter potentially historic properties. Board authority would be required should the Line be abandoned.

Given the facts explained in your letter, SEA concludes that the preparation of an Environmental and Historic Report would not be required for a discontinuance of service by SDIV. The mere substitution of PSR for SDIV with no significant operational changes and no effect on historic properties meets the exemption criteria of 49 CFR 1105.6(c)(2) and 1105.8(b)(1).

Thank you for your patience and please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Victoria Rutson
Chief, Section of
Environmental Analysis

EXHIBIT E–BNSF NOTICE OF TERMINATION

From: Johnson, Jerome M
To: Putterman, Josh (GPRK)
Cc: Stroot, Richard E ; John Hoegemeier , Dennis Wilson
Sent: Tue Sep 09 18:32:14 2008
Subject: Escondido Switching Arrangement Termination

Josh,

This with reference to the switching activities now being performed in Escondido CA by the SDIY While we plan to get back to you in more detail in a few days, in order to proceed with your planning and budgeting, BNSF will be terminating the Escondido switching arrangement on October 24, 2008 We appreciate the fine work Pete and the SDIY team has done in Escondido Our decision to terminate is, therefore, in no way based on the quality of work performed Contact me if you have any questions or comments

Jerry

This message may be confidential and should be read or retained only by the intended recipient If you have received this transmission in error, please notify the sender by replying to this message and then delete it from your system Thank you

Jerome M Johnson
BNSF Railway, Fort Worth, TX
(817) 352-6434
(817) 271-9293 (Mobile)

EXHIBIT F—CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. §1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No AB-1029 (Sub-No 1X), *San Diego & Imperial Railroad Company, Inc –Discontinuance of Service Exemption—in San Diego County, CA*, was mailed via first class mail, postage prepaid, on January 29, 2009, to the following parties

State Public Service Commission

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Military Surface Deployment and Distribution Command Transportation Engineering Agency

Headquarters
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357


National Park Service

U S Department of Interior
National Park Service
Land Resources Division
1201 Eye Street, N W
Washington, DC 20005

Ms Cherrí Espersen
National Recreation Trail Coordinator
Rivers, Trails and Conservation Assistance Program National Park Service
1849 C Street, NW (Org Code 2240)
Washington, DC 20240-0001

U.S. Department of Agriculture

U S Department of Agriculture
Chief of the Forest Service
4th Floor. NW
Sidney R Yates Building
201 14th Street, S W
Washington, DC 20250



Louis E Gitomer
January 29, 2009

EXHIBIT G—COLOR MAP

